



W.P.(MD)No.16753 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2024

CORAM

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.16753 of 2017

and

W.M.P.(MD)Nos.13363, 13364 of 2017

& 8338 of 2018 & 960 of 2020

S.R.Sivakumar

: Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Health and Family Welfare Department,
St. George Fort,
Chennai.

2.Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Brazer Freezer Salai,
Near Govt. Dental College,
Chennai.

3.The Director of Public Health and
Preventive Medicine,
Chennai – 6.



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4.The Deputy Director of Health Services,
Viswanathapuram,
Madurai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records pertaining to the impugned orders issued by the second respondent in letter in D.O.Letter No.7281/P.S.T.D2/2009 dated 09.08.2017 and consequential direction given by the third respondent in his Na.Ka.No.85604/PaTho4/Eru4/2009 dated 31.08.2017, quash the same.

For Petitioner : Mr.Sankaralingam
for Mr.R.Subramanian
For Respondents 1, 3&4 : Mrs.D.Farjana Ghoushia
Special Government Pleader
For Respondent No.2 : Mr.J.Anandkumar
Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned orders of the second respondent dated 09.08.2017 and the consequential direction given by the third respondent dated 31.08.2017.



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2.The petitioner is a handicapped person suffering from 80% disability in his left leg. The petitioner was duly selected and appointed as Junior Assistant in the office of the fourth respondent on 08.07.2033 on consolidated pay.

3.After joining the post of Junior Assistant in the office of the fourth respondent, the second respondent conducted a Special Competitive Examination for the purpose of absorbing the temporary employees who were appointed during the strike period. The petitioner wrote the said examination. According to the petitioner, the result was not published for a very long time.

4.According to the petitioner, in the meantime, the Government has taken a policy decision and issued G.O.(Ms).No.151, Social Welfare and Noon Meal Scheme Sa.Na.4 Department dated 16.10.2008, directing the heads of all the Government departments to regularise the services of the handicapped employees who are serving for more than two years in various departments and to fix the time scale of pay for them. According to the petitioner, the Government in D.O. Letter dated 22.06.2009 of the Principal Secretary / State Commissioner for the Disabled has issued orders regularising the disabled persons drawing consolidated pay for more than two years as per G.O.(Ms).No.151 dated 16.10.2008 and



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directed the heads of the department to issue consequential orders and to furnish the implementation report at once.

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5. On 04.01.2010, the third respondent issued orders appointing the petitioner as a Junior Assistant on regular basis and posted him in the office of the fourth respondent. The petitioner has also submitted a joining report in pursuance of the said order. On 22.12.2009, the second respondent has informed the petitioner that he has been provisionally selected pursuant to the special examination conducted in the year 2007 and allotted the petitioner to Police Department in the Tamil Nadu Ministerial Service. On receipt of the said communication, the petitioner submitted a representation to the second respondent on 29.12.2009 itself expressing his unwillingness to accept the above said selection since the Government have already regularised his services in the fourth respondent as per G.O.(Ms).No.151 dated 16.10.2008. The petitioner has also completed his probation in the service of junior Assistant in the fourth respondent department with effect from 26.01.2012. The petitioner was thereafter promoted as Assistant in the same department with effect from 20.11.2014. However, under the impugned letter of the second respondent dated 09.08.2017, the third respondent has been directed by the second respondent to relieve the petitioner from service and has directed the petitioner to



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join duty as Junior Assistant in the Police Department as per the earlier communication received by the petitioner dated 22.12.2009.

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6.According to the petitioner, the petitioner has challenged the impugned letter dated 09.08.2017 issued by the second respondent as stated supra under the following grounds:

a) by total non-application of mind to the fact that the petitioner had expressed his unwillingness to join the police department pursuant to his subsequent selection, the second respondent has passed the impugned order.

b) the petitioner being a handicapped person whose services has been regularised in the department of the fourth respondent, ought not to have been directed to be posted in the police department as per the impugned communication of the second respondent.

7.The petitioner's services in the fourth respondent department has been regularised as early as in the year 2012 itself and the petitioner having given his unwillingness to join the police department immediately on receipt of the communication from the second respondent dated 22.12.2009, the question of posting the petitioner in the police department under the impugned communication does not arise. Learned Counsel for the petitioner



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would also submit that subsequent to the passing of the impugned order, the petitioner has been promoted as Assistant in the fourth respondent department on 20.11.2014 itself. Eventhough, a counter affidavit has been filed by the respondents denying the contentions of the petitioner, where they have reiterated that the impugned communication will have to be implemented, this Court is of the considered view that there is no basis for the same due to the fact that the petitioner is a disabled person whose services has been regularised with the fourth respondent as early as in the year 2012 itself and he has also been promoted thereafter as an Assistant. The petitioner having expressed his unwillingness to join police department pursuant to his subsequent selection, he cannot be compelled to join the police department being a handicapped person.

8.This writ petition was filed in the year 2017. The petitioner is having the benefit of interim stay of the impugned order and he continues to work in the fourth respondent department. Therefore, at this stage, when the petitioner is a disabled person, the question of relieving him from the services of the fourth respondent and posting him in the police department will not arise and it will be detrimental to his interest.



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9.For the foregoing reasons, the impugned order of the second respondent dated 09.08.2017 and the consequential communication of the third respondent dated 31.08.2017 are hereby quashed.

10.Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index :Yes / No

Internet : Yes / No

NCC : Yes/No

MR



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To

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ABDUL QUDDHOSE, J.

MR

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